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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/600,411	06/20/2003	Walter Winkler	1020843-991250	7001
26379	7590	06/29/2005	EXAMINER	
DLA PIPER RUDNICK GRAY CARY US, LLP 2000 UNIVERSITY AVENUE E. PALO ALTO, CA 94303-2248			GERRITY, STEPHEN FRANCIS	
		ART UNIT		PAPER NUMBER
		3721		

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/600,411	WINKLER, WALTER	
	Examiner Stephen F. Gerrity	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 08 April 2005.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-34 is/are pending in the application.
 4a) Of the above claim(s) 21-34 is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-7, 12, 13 and 16-19 is/are rejected.
 7) Claim(s) 8-11, 14, 15 and 20 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 20 June 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/1/04 & 5/16/05</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the invention of Group I (claims 1-20) in the reply filed on 8 April 2005 is acknowledged. The traversal is on the ground(s) that the amendment made to claim 21 renders the two groups of claims non-distinct. This is not found persuasive because the apparatus of Group I can be used to perform another and materially different process such as one in which there is no logging of a pick order, no determination of a three-dimensional loading configuration, determination of a loading sequence, and/or successive, automated conveying of the packing units - as was previously stated, and the apparatus and process are thus clearly distinct from one another.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 21-34 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8 April 2005.

Information Disclosure Statement

3. Receipt is acknowledged of Information Disclosure Statements, filed 1 June 2004 and 16 May 2005, which have been placed of record in the file. An initialed, signed and dated copy of each of the PTO-1449 forms is attached to this Office action.

Oath/Declaration

4. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

- a. It does not identify the foreign application for patent or inventor's certificate on which priority is claimed pursuant to 37 CFR 1.55, and any foreign application having a filing date before that of the application on which priority is claimed, by specifying the application number, country, day, month and year of its filing; and.
- b. It does not identify the citizenship of each inventor.

Drawings

5. The drawings are objected to because:

- a. on each of the sheets 9/13, 11/13 and 12/13, each of the figures found on these sheets needs to be separately labeled with the proper figure number.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

6. The abstract of the disclosure is objected to because of the use of legal phraseology (means). Correction is required. See MPEP § 608.01(b).
7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. In light of the restriction requirement, it is suggested that the title of the invention be amended so that it is consistent with the elected invention.
8. The disclosure is objected to because of the following informalities: in light of the objection to the drawings regarding the failure to label each of the figures found on sheets 9/13, 11/13 and 12/13, the brief drawing description section must be amended to include a separate brief drawing description for each figure once re-labeled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 4, 5 and 17-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4, line 1, the language "a loading aid" makes the claim indefinite because it is unclear from the claim if this is the same or a different "loading aid" from the one recited in claim 3.

Claim 4, line 2, the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 5 is considered to be vague and indefinite because the claim fails to positively recite any structural or mechanical relationship between the subject matter of claim 5 and the subject matter of claim 1, as only one load carrier is set forth in claim 1.

Claims 17-19 are likewise considered to vague and indefinite because the claim fails to positively recite any structural or mechanical relationship between the subject matter of claim 5 and the subject matter of claim 1.

Claims 18, line 2 and claim 19, line 2, each recite the limitation "the tray". There is insufficient antecedent basis for this limitation in the claim.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

12. Claims 1, 6, 7 and 16 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Lyon et al. (**US 5,733,098**).

13. Claims 1, 3, 4, 7, 12, 13, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Langhammer (**DE 4,213,351**).

The Langhammer reference meets the claimed structure set forth in claims 1, 3, 4, 7, 12, 13, 17 and 19, including a tongue (4), a scraper (8), and a tilting device (conveyor 1 tilts the packing unit 11 onto the tray 3).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langhammer (**DE 4,213,351**) in view of Partanen et al. (**DE 3,814,101**).

The Langhammer reference meets all of applicant's claimed subject matter with the exception of the lifting device. The Partanen et al. reference discloses that it is old and well known in the art to provide a lifting device (35) for lifting and lowering the load carrier. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Langhammer stacking device by having included a lifting device, as suggested by Partanen et al., in order to lift and lower the load carrier to create stacks of greater or lesser height.

16. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Langhammer (**DE 4,213,351**) in view of Agia (**CH 435,116**).

The Langhammer reference meets all of applicant's claimed subject matter with the exception of the load-carrier tilting device. The Agia reference discloses that it is old and well known to provide a load-carrier tilting device (40,41) for repositioning the load-carrier. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified the Langhammer stacking device by having included a load-carrier tilting device, as suggested by Agia, in order to reposition the load-carrier.

Allowable Subject Matter

17. Claims 8-11, 14, 15 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

18. Claim 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

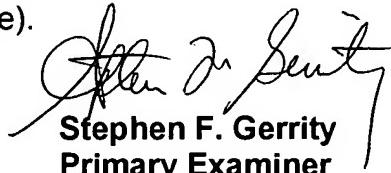
Conclusion

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is (571) 272-4460. The examiner can normally be reached on Monday - Friday from 5:30 - 2:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen F. Gerrity
Primary Examiner
Art Unit 3721

27 June 2005